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2011 IL App (4th) 100499-U

Filed 12/29/11

NO. 4-10-0499

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
GREGORY L. CLARK,	)	No. 06CF1368
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

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JUSTICE COOK delivered the judgment of the court.  
Justices Pope and McCullough concurred in the judgment.

### ORDER

¶ 1 *Held:* In accordance with *People v. Dorsey*, 404 Ill. App. 3d 829, 942 N.E.2d 535, 542 (2010), we affirm the dismissal of defendant's postconviction petition where the record refutes defendant's claim that he was insufficiently admonished that his plea-bargained prison sentence would entail an additional term of mandatory supervised release (MSR).

¶ 2 In May 2010, the trial court summarily dismissed defendant Gregory L. Clark's postconviction petition. Defendant appeals, arguing the court erred by dismissing his petition as it stated the gist of a constitutional claim. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In August 2006, the State charged defendant with residential burglary (720 ILCS 5/19-3 (West 2006)). Due to prior convictions, defendant was eligible for Class X sentencing. In September 2006, defendant pleaded guilty pursuant to a negotiated plea bargain. At the plea

hearing, the trial court admonished defendant of the range of possible penalties, including "a period of mandatory supervised release [(MSR)] of three years." This was the only mention of MSR during the plea hearing. Defendant acknowledged that he understood the sentencing range. Pursuant to the terms of the plea bargain, the court sentenced defendant to 20 years' imprisonment. The space regarding MSR in the written sentencing order was left blank.

¶ 5 In May 2010, defendant filed his postconviction petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 through 122-8 (West 2008)). Defendant alleged he was denied the benefit of his plea bargain because he was not advised that his 20-year prison sentence would be followed by a 3-year MSR term. Later that month, the trial court dismissed defendant's petition, finding it was frivolous and patently without merit.

¶ 6 This appeal followed.

## ¶ 7 II. ANALYSIS

¶ 8 On appeal, defendant argues the trial court erred in dismissing his postconviction petition as the petition stated the gist of a constitutional claim. We disagree.

¶ 9 We review the first-stage dismissal of defendant's postconviction petition *de novo*. See *People v. Coleman*, 183 Ill. 2d 366, 389, 701 N.E.2d 1063, 1075 (1998).

¶ 10 A trial court breaches due process when it fails to admonish a defendant who pleads guilty that an agreed prison sentence will be followed by a term of MSR. *People v. Whitfield*, 217 Ill. 2d 177, 191, 840 N.E.2d 658, 667 (2005). A defendant who pleads guilty without having been adequately admonished may choose to withdraw his plea, allowing the charges to be reinstated, or to have his prison sentence reduced by the applicable MSR term. *Id.* at 202, 840 N.E.2d at 673. Discussing *Whitfield* in *People v. Morris*, 236 Ill. 2d 345, 367, 925

N.E.2d 1069, 1082 (2010), the supreme court stated, "Ideally, a trial court's admonishment would explicitly link MSR to the sentence to which [the] defendant agreed in exchange for his guilty plea, would be given at the time the trial court reviewed the provisions of the plea agreement, and would be reiterated both at sentencing and in the written judgment."

¶ 11 In *People v. Dorsey*, 404 Ill. App. 3d 829, 836, 942 N.E.2d 535, 542 (2010), this court affirmed the first-stage dismissal of the defendant's postconviction petition where the defendant was not denied due process under *Whitfield* when he had been admonished at his plea hearing that the range of penalties for his conviction included an additional three-year MSR term. Specifically, the trial court had admonished the defendant at his plea hearing, "If you're sent to prison there's a period of mandatory supervised release of three years." *Id.* at 831, 942 N.E.2d at 537. MSR was not mentioned further during the plea hearing. *Id.* at 831, 942 N.E.2d at 538.

¶ 12 Defendant acknowledges that *Dorsey* controls this appeal but asks us to reconsider this court's holding in that case. Absent superseding and binding precedent to the contrary, however, we decline to do so. Accordingly, we hold defendant's postconviction petition fails to state the gist of a constitutional claim as the record refutes his contention that he was insufficiently admonished that his plea-bargained sentence would be followed by an additional three-year MSR term.

¶ 13 III. CONCLUSION

¶ 14 For these reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its statutory \$50 assessment as costs of this appeal.

¶ 15 Affirmed.